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FROM

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PATENT

Attorney Docket No. 57634.3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Douglas G. Lowenstein, et al.

Serial No.: 09/611,548

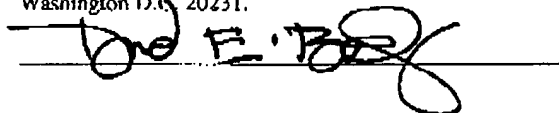
Filed: July 7, 2000

Examiner: Pedro Kanof

Art Unit: 3628

Title: FINANCING OF TENANT IMPROVEMENTS

I certify that this correspondence, along with any documents referred to therein, is being transmitted by facsimile on March 31, 2003 to The Commissioner for Patents, Box AF, Washington D.C. 20231.



INFORMATION DISCLOSURE STATEMENT

COMMISSIONER FOR PATENTS
Washington, D.C. 20231

In accordance with 37 C.F.R. §§1.56, 1.97 and 1.98, Applicant wishes to make of record the following information.

1. Applicants' activities before July 7, 1999 did not rise to the level of a contractual offer for sale and thus cannot trigger a § 102(b) "on sale" bar. Before July 7, 1999 (the filing date of the provisional application from which this application claims priority):

- a. Applicants never entered discussions that included all parties necessary to formation of a contract that would fall within any claim of this application. For example, no discussion of the invention ever included both a landlord and a tenant.
- b. No party to any discussions proposed an offer containing a definite statement of all material terms, such as price or the time of performance.
- c. No party partially performed under any implied contract that would fall within any claim of the application.
- d. Applicants never communicated any manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

There was never an offer that another could have made into a binding contract by simple acceptance and consideration, and thus no "on sale" bar.

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2. To Applicants' knowledge, there is § 102(b) "public use" bar. To Applicants' knowledge, there was no actual use of the invention before July 7, 1999.

3. Applicants' activities before July 7, 1999 do not raise a § 102(b) "printed publication" bar. No documents describing the lease structure were made generally available to persons concerned with the art. All discussions with others that disclosed any details of the lease structure claimed in the application were under an explicit written non-disclosure agreement. Any presentation that was not under a formal written non-disclosure agreement was limited to a high-level, non-enabling discussion of the structure. No description of the structure that would allow one of skill in the art to reduce the invention to practice was ever made except under an explicit written non-disclosure agreement.

4. This Information Disclosure Statement it is being filed more than three months after filing of this application and after the mailing of a first Office Action on the merits, but before the mailing date of a final action under 37 C.F.R. § 1.113, or a Notice of Allowance under 37 C.F.R. § 1.311 (where there has been no prior final action), or an action that otherwise closes prosecution in the application. A fee is due pursuant to 37 C.F.R. §1.97(c)(2).

5. Charge the \$180.00 fee due under C.F.R. §1.17 to Deposit Account 50-0675, Order No. 57634.3.

6. The Commissioner is hereby authorized to charge any additional fees that may be required for this Information Disclosure Statement, or credit any overpayment, to Deposit Account 50-0675, Order No. 57634.3.

Respectfully submitted,

SCHULTE ROTH & ZABEL, LLP

Dated: March 31, 2003

By:


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